Supreme Court, U.S.
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No. 00-1916

In The

Supreme Court of the United States

TIMOTHY WALTON,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Tennessee

PETITIONER'S SUPPLEMENTAL BRIEF

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PETITIONER'S SUPPLEMENTAL BRIEF

Petitioner Timothy Walton respectfully submits this supplemental brief in support of his petition for a writ of certiorari in order to bring to the Court's attention recent federal authority supporting reversal of the judgment of the Tennessee Supreme Court in this case. Specifically, on June 26, 2001, the United States District Court for the District of Maine ruled, on the basis of this Court's recent decision in *Dickerson v. United States*, 530 U.S. 428 (2000), that non-testimonial evidence discovered directly as a result of a custodial interrogation that violated the constitutionally-required Fifth Amendment protections set forth in *Miranda v. Arizona*, 384 U.S. 436 (1966), must be suppressed as fruit of the poisonous tree. *United States v. Kruger*, No. CR. 00-88-P-C, 2001 WL 720467 (D. Me. June 26, 2001). This federal authority is directly contrary to the Tennessee Supreme Court's decision in this case and further creates a conflict warranting resolution by this Court.

I. THE TENNESSEE SUPREME COURT'S DECISION IS INCONSISTENT WITH RECENT FEDERAL AUTHORITY

On June 26, 2001, the United States District Court for the District of Maine ruled, on the basis of this Court's recent decision in *Dickerson v. United States*, 530 U.S. 428 (2000), that non-testimonial evidence discovered directly as a result of a custodial interrogation in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966), must be suppressed as fruit of the poisonous tree. *United States v. Kruger*, No. CR. 00-88-P-C, 2001 WL 720467, slip op. at

*11-13 (D. Me. June 26, 2001). The District Court's decision is directly contrary to the Tennessee Supreme Court's ruling in Petitioner Walton's case that non-testimonial evidence discovered directly as a result of his unwarned statements in violation of *Miranda* was admissible in the absence of any evidence that his statements were the product of "actual coercion."

In *Kruger*, the police interrogated the defendant Kruger while he was in custody without reading his *Miranda* warnings and, as a result, learned the location of cocaine. In ruling the cocaine should be suppressed, the District Court held that tangible evidence obtained directly as a result of a violation of *Miranda's* constitutionally based rights cannot be introduced in a criminal case against the accused. *Kruger*, slip op. at *12 (citing *Wong Sun v. United States*, 371 U.S. 471, 485 (1963); *Nix v. Williams*, 467 U.S. 431, 442 (1984)). The District Court stated:

> Since *Dickerson*, the answer to the question is properly demonstrated by a clear and direct analytic construct based entirely on recognized decisions of the United States Supreme Court:
>
> (1) a person in custody has a right *not* to be interrogated without first being given a four-point warning of his rights in respect to such interrogation and of the consequences of responding to the interrogator's questions, *Miranda v. Arizona*, 384 U.S. at 444, 86 S.Ct. at 1612, which right is of constitutional origin and dimension, *Dickerson*, 530 U.S. at 440, 120 S.Ct. at 2334;

> (2) tangible evidence obtained directly or indirectly as a result of a violation of the constitutionally based rights of a person cannot be, over objection, introduced into evidence in a criminal case against the person whose rights have been violated in obtaining evidence. *See Wong Sun v. United States*, 371 U.S. 471, 485 (1963); *Nix v. Williams*, 467 U.S. 431, 442 (1984) [quotations omitted]; and
>
> (3) therefore, tangible evidence obtained directly or indirectly from an interrogation conducted in violation of the strictures of *Miranda*, a violation of rights of constitutional dimension, must be, on demand, suppressed.

Id.

The District Court concluded that, since the police found the cocaine as a result of interrogating Kruger in violation of his Fifth Amendment *Miranda* right not to be compelled to incriminate himself, the tangible evidence could not be used against him in his criminal trial. *Id.* The District Court stated:

> Here, the Court has found that the interrogation of Defendant Kruger in respect to the location of the cocaine in question was conducted in violation of the strictures of *Miranda* (*e.g.*, without Kruger having been given *any Miranda* warning whatsoever). It is clear that this violated his constitutional rights, *Dickerson*, 530 U.S. at 440, 120 S.Ct. at 2334, not to be compelled to incriminate himself under the Fifth Amendment to the United States Constitution. Tangible evidence so obtained cannot be used against him in any criminal case. *Wong Sun*, 371 U.S. at 488, 83 S.Ct. at 417 (The question is

> "whether, granting establishment of the primary illegality, the evidence to which instant objection is made, has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint."). The Court finds that the cocaine in this case was found as a direct result of Kruger's answer to the unwarned interrogation question regarding its whereabouts. No independent causal factor of any kind intervened between the answer and the discovery of the cocaine. It may not, therefore, be used against him to convict him of any criminal charge set out in the present Indictment, and it is, therefore, to be suppressed from evidence in such proceedings.

Id.

The District Court explicitly rejected many of the pre-*Dickerson* circuit court decisions that had ruled that nontestimonial evidence discovered as a result of a *Miranda* violation did not have to be suppressed in the absence of a showing of "actual coercion" in violation of the Fifth Amendment itself. *Id.* at *13.[1] The District Court noted that, prior to *Dickerson*, the issue of suppression of evidence discovered as a result of a *Miranda* violation "turned on a complex and largely opaque analysis attempting to resolve on an *ad hoc* basis the tension between the reliability of the subject evidence and the goal of deterrence of police misconduct." *Id.* (citations omitted). The District Court concluded that "all of that

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[1] *See, e.g., United States v. Byram*, 145 F.3d 405 (1st Cir. 1998); *United States v. Elie*, 111 F.3d 1135 (4th Cir. 1997); *United States v. Cherry*, 794 F.2d 201 (5th Cir. 1980), *cert. denied*, 479 U.S. 1056 (1986).

has gone by the board with the conferral by *Dickerson* of constitutional status on the right to a *Miranda* warning." *Id.*

The District Court added that, to the extent that prior learning is found to remain viable after *Dickerson*, the deterrence rationale was compelling for suppressing the direct non-testimonial fruits of a *Miranda* violation. *Id.* As Petitioner Walton has argued in his petition, the District Court reasoned: "The exclusion of the cocaine, the substance – indeed essence – of the suppressed statements, is necessary to deter law enforcement officers from foregoing the administration of *Miranda* warnings in future cases in which they believe that they may successfully gain access to tangible evidence that will be usable at trial despite the violation of *Miranda* strictures." *Id.*[2]

The District Court's decision in *Kruger* is contrary to the Tennessee Supreme Court's ruling in this case. The *Kruger* decision, however, is in accord with several state courts that likewise have ruled, particularly after *Dickerson*, that the traditional poisonous tree doctrine should apply to non-testimonial evidence obtained in violation of *Miranda's* Fifth Amendment protections. *See* Petitioner Timothy Walton's Petition for Writ of Certiorari at pp. 10-11 & n.5 (filed June 25, 2001). This continuing split of authority on this fundamental issue of constitutional law supports Petitioner Walton's request for this Court to issue a writ of certiorari.

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[2] The District Court further concluded that the government had failed to show that the cocaine would have been inevitably discovered absent the *Miranda* violation. *Id.* at *13-15.

II. CONCLUSION

Petitioner Timothy Walton respectfully requests that the Court issue the writ of certiorari because non-testimonial evidence derived directly from statements in violation of the Fifth Amendment rule announced in *Miranda* should be suppressed as fruit of the poisonous tree.

Respectfully submitted,

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